

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

OCT 03 2014

OFFICE OF
MANAGING DIRECTOR

Paul S. Lotsof, Vice President
Stereo 97, Inc.
Post Office Box 18899
Tucson, AZ 85731

Licensee/Applicant: **Stereo 97, Inc.**
Waiver and Refund of Payment: Financial Hardship
Disposition: **Denied** (47 U.S.C. § 159(d); 47
C.F.R. § 1.1166(c))
Stations: KAVV, KAVV-FM1 & WHB636
Fee: FY 2012 Regulatory Fees and Late Payment
Penalty
Date Request Filed: Jun. 14, 2013
Date Regulatory Fees Paid: Jan. 1, 2013
Date Regulatory Late Penalties Paid: Jan. 1, 2013
Fee Control No.: RROG-12-00015268

Dear Mr. Lotsof:

This responds to Licensee's *Request*¹ for waiver and refund of the required Fiscal Year (FY) 2012 regulatory fees that is based on financial hardship. As we discuss below, because Licensee failed to demonstrate both good cause and that the public interest is served by waiving the fee, we deny the *Request*.

On June 7, 2013, Licensee submitted its Request "for waiver of the [FY 2012] regulatory fees ... pursuant to 47 C.F.R. § 1.1166 and 47 U.S.C. § 159(d)" on grounds that the station "continue[s] losing money from on-going operations on a cash basis, excluding depreciation." License also asked that we refund the statutory late payment penalty that was imposed because Licensee failed to "remit the Regulatory Fee on time." Licensee suggests that "[i]f the regulatory fee is waived, the amount on which the 25% late payment penalty was imposed is reduced to zero, so there will no longer be any basis for a late payment penalty." Licensee submitted financial information including an accountant's review report, statement of assets, liabilities, and stockholder's equity, statement of revenues, expenses and deficit, statement of cash flows, and notes to financial statements. In addition to Licensee's materials, we located public information pertaining to Licensee's station showing that the station promotes itself as "Southeast Arizona's

¹ Letter from Paul Lotsof, Box 18899, Tucson, AZ 85731 to Att'n: Regulatory Fee Waiver Requests, Office of Managing Director, FCC, 445 12th St., S.W., Rm 1-A625, Washington, DC 20554 (Jun. 7, 2013) with Financial documents for Years Ended June 30, 2012 and 2011, including Accountant's Review Report (Sep. 12, 2012), Statement of Assets, Liabilities, and Deficiency in Assets-Cash Basis, June 30, 2012 and 2011, Statement of Revenues, Expenses and Deficit-Cash Basis, Statement of Cash Flows, and Notes to Financial Statements Years Ended June 30, 2012 and 2011(*Request*).

Most Powerful Radio Station”² providing radio service over-the-air and by internet streaming from its location in Benson, Arizona.

We first turn to that portion of Licensee’s Request seeking waiver of the FY 2012 regulatory fees on grounds of financial hardship. In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced or deferred, but only upon a showing of *good cause* and a finding that the *public interest will be served* thereby.³ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.⁴ In an appropriate situation, fee relief may be granted based on a “sufficient showing of financial hardship.”⁵ In such matters, however, “[m]ere allegations or documentation of financial loss, standing alone,” do not suffice and “it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public.”⁶ Thus, in order to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee’s balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁷ Licensee failed to meet that standard.⁸

Licensee provided some financial information to support assertions of financial loss; however, financial loss alone does not present extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. The primacy of the standard is that the Licensee must present “extraordinary and compelling circumstances showing that a waiver ...

² See www.cavefm.com/cave_coverage.html.

³ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166 (“The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”). See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344, ¶ 29 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

⁴ *Id.*

⁵ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (FY 1994 MO&O).

⁶ *Id.*

⁷ 9 FCC Rcd at 5344 ¶ 29; In The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) (“Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee’s ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [Licensee] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

⁸ See *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971); *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) (“petitioner ... has the ‘burden of clarifying its position’ before the agency.”). See also 47 C.F.R. § 1.65 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

would override the public interest” in collecting the fee.⁹ We analyze the facts of each case to determine whether the Licensee has satisfied both prongs of the Commission’s standard, financial hardship and extraordinary¹⁰ and compelling circumstances¹¹ showing waiver is justified.¹²

Licensee bases its asserted financial hardship on a statement of revenues, expenses and deficit showing that as of the end of its year, expenses exceed the reported revenue from operations. In that regard, Licensee failed to adequately clarify important elements of its submission. For example, the accountants stated they “reviewed the ... statement” and included the definition that the “review includes primarily applying analytical procedures to management’s financial data A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, [the accountants] do not express such an opinion.”¹³ In addition to this disclaimer, the Notes to Licensee’s financial statements suggest unreported receivables in the context of the explanation that the “basis [of accounting in Licensee’s situation] differs from generally accepted accounting principles primarily because [Licensee] has not recognized balances, and the related effects on earnings, of accounts receivable from advertising services rendered, and accounts payable to vendors.”¹⁴ Indeed, Licensee’s reported revenue from operations, which by definition includes only revenue from day-to-day activities, and no other sources. Licensee failed to clarify these points. Furthermore, Licensee failed to clarify the apparent inconsistency between asserting in the *Request* that the station “has never been profitable, because it serves such a small and impoverished market” and promoting on the internet that the station is “Southeast Arizona’s Most Powerful Radio Station.” This is important to Licensee’s burden of showing the public interest is served by waiving the fee to be paid by a self-proclaimed powerful radio station. Overall, Licensee failed to establish an accurate picture of its financial status and the station operation, and equally important, Licensee failed to show the “the impact of the regulatory fee [on the Licensee’s] ability to serve the public.”¹⁵ Moreover, Licensee did not show how, in light of the current national financial climate, the public interest will be served by waiving the fee. We will not speculate about the substance of the information that might fill in the gaps. Accordingly, we deny Licensee’s *Request*.¹⁶

Our disposition of the requested waiver ends the matter and we need not discuss the reasons why the statutory 25% penalty would not be refunded.

⁹ FY 1994 MO&O, 10 FCC Rcd at 12761, ¶ 12.

¹⁰ Black’s Law Dictionary (9th ed. 2009)(extraordinary-“a highly unusual set of facts that are not commonly associated with a particular thing or event”).

¹¹ *Id.* (compelling-“something so great that irreparable harm or injustice would result if not met”).

¹² In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

¹³ *Request, Independent Accountants’ Review Report.*

¹⁴ *Request, Notes to Financial Statements.*

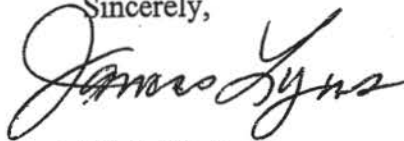
¹⁵ FY 1994 MO&O, 10 FCC Rcd at 12762, ¶ 13.

¹⁶ 47 C.F.R. § 1.1166.

Licensee requested confidential treatment of the submitted financial data. Under 47 C.F.R. §§ 0.442(d)(1) and 0.459(d)(3), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records; however, in the meantime, we treat the records confidentially.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Lyns".

FOR: Mark Stephens
Chief Financial Officer